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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Application by Verizon Pennsylvania, Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Pennsylvania	)	CC Docket No. 01-138

COMMENTS OF YIPES TRANSMISSION, INC.

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July 11, 2001

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COMMENTS OF YIPES TRANSMISSION, INC.

Yipes Transmission, Inc. ("Yipes") files these comments in opposition to the application by Verizon Pennsylvania, Inc. ("Verizon") for authorization under Section 271 of the Communications Act of 1934, as amended ("Act"), to provide in-region, interLATA service in Pennsylvania (the "Application").[1] As demonstrated below, the Commission should deny the Application because Verizon is not in compliance with items 2 (access to network elements), 4 (local loops), and 5 (local transport) of the competitive checklist of Section 271(c)(2)(B) of the Act.[2]

STATEMENT OF INTEREST

Yipes is a leading provider of fully scalable bandwidth for businesses. Yipes offers fully-managed high speed Internet and nationwide LAN to LAN services at speeds ranging from 1 Mbps to 1 Gbps, in 1 Mbps increments. Yipes delivers this uniquely flexible service over the first nationwide system of managed optical IP networks.

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1 *See Comments Requested on the Application by Verizon Pennsylvania, Inc. for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Pennsylvania*, Public Notice, CC Docket No. 01-138, DA 01-1486 (June 21, 2001).

2 47 U.S.C. § 271(c)(2)(B).

Yipes is authorized to provide data, competitive local exchange, exchange access services, and interexchange services in certain jurisdictions throughout the United States, including Pennsylvania.

SUMMARY

Before it can grant the Application, the Commission must find that Verizon has "fully implemented the competitive checklist in subsection (c)(2)(B)." To do so, the Commission must assess whether Verizon has "demonstrate[d] that the access it provides to competing carriers would offer an efficient carrier a 'meaningful opportunity to compete.'" In applying this standard, the Commission must evaluate not simply whether Verizon is making a particular checklist item available to competitors, but also whether the manner in which Verizon is doing so allows competitors to compete on an equal footing. The Commission should also evaluate Verizon's overall conduct under Section 271(d)(3)(C), which requires the Commission to consider whether grant of the Application is "consistent with the public interest, convenience, and necessity."

Yipes' objections to the Application center around the restrictions that Verizon places on its provisioning of dark fiber, which is a component of both the local loop and transport unbundled network elements ("UNEs"). Verizon's practices concerning the provisioning of dark fiber are relevant to the Commission's consideration of checklist items 4 (local loops) and 5 (local transport) and, generally, item 2 (access to UNEs).

The restrictions that Verizon places on the availability of dark fiber fall into three general categories. First, Verizon places a number of limitations on what dark fiber it is willing to provide to competitors. Second, Verizon imposes a number of restrictions on how and where competitors can gain access to the dark fiber that Verizon provisions. Finally, Verizon insists that it is entitled to take back dark fiber that has been assigned to—

and is in use by—a competitor where Verizon unilaterally determines that the dark fiber is being "underutilized" or that its need for the facilities in question trumps the competitor's. Each of these three categories of restrictions is discussed separately in Section II of the Discussion below.

Collectively, the conditions imposed by Verizon are so onerous that it is difficult, if not impossible, for competitors to "meaningfully compete" using Verizon-provided dark fiber. Accordingly, the Commission should find that Verizon has failed to meet checklist items 2, 4, and 5. Moreover, given Verizon's overall pattern of anticompetitive conduct with respect to dark fiber, the Commission should also find that the grant of the Application is not consistent with the public interest standard of Section 271(d)(3)(C) and should deny it on that basis as well.

DISCUSSION

Yipes' objections to the Application center around Verizon's provisioning of dark fiber. The Commission has defined both the local loop and transport unbundled network elements ("UNEs") to include dark fiber.[3] Accordingly, Verizon's practices concerning the provisioning of dark fiber are relevant to the Commission's consideration of checklist items 4 (local loops) and 5 (local transport) and, generally, item 2 (access to UNEs).

Yipes is currently in the initial stages of an arbitration with Verizon before the Pennsylvania Public Utility Commission ("Pennsylvania PUC") over the terms of an interconnection agreement for Pennsylvania. The majority of the issues being arbitrated

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[3] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, ¶¶ 174, 325 (1999) ("*UNE Remand Order*"); 47 C.F.R. §§ 51.319(a)(1), (d)(1).

concern the unreasonable and anticompetitive restrictions that Verizon insists on placing on its provision of dark fiber. As Yipes demonstrates below, in the aggregate, those restrictions so constrain competitors' ability to avail themselves of dark fiber that Verizon's theoretical willingness to provision it is, as a practical matter, rendered meaningless. For that reason, the Commission must find that Verizon has failed to meet items 2, 4, and 5 of the competitive checklist and deny the Application.

I. The Legal Standard for Evaluating the Application

In order to obtain Section 271 interLATA authority in Pennsylvania, Verizon must demonstrate that it has "fully implemented the competitive checklist in subsection (c)(2)(B)."[4] Specifically, Verizon must demonstrate that it is offering interconnection and access to network elements on a nondiscriminatory basis.[5] In order for the Commission to find that Verizon provides such nondiscriminatory access, Verizon must "demonstrate that the access it provides to competing carriers would offer an efficient carrier a 'meaningful opportunity to compete.'"[6] In its orders reviewing applications for interLATA authority pursuant to Section 271, the Commission has not established "specific objective criteria"

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[4] *Application of Verizon New England Inc., et al. for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, Memorandum Opinion and Order, CC Docket No. 01-9, FCC 01-130, ¶ 11 (April 16, 2001).

[5] *Id.*

[6] *Id.* (citing *Application by Bell Atlantic New York for Authorization Under Section 271 of the Telecommunications Act of 1996 to provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953, ¶¶ 17-20 (1999) ("*Bell Atlantic New York Order*") and *Application of Ameritech Michigan Pursuant to Section 271 of the Communications act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, 12 FCC Rcd 20543, ¶ 141 (1997)).

defining a "meaningful opportunity to compete."[7] Instead, the Commission reviews each application on a case-by-case basis.[8]

To date, the Commission has relied principally on its evaluation of performance measures data to determine if the ILEC has complied with the terms of the competitive checklist. Performance measurements, however, do not tell the whole story. The ILEC may be providing sufficient quantities of a particular checklist item at service levels comparable to those it provides itself, yet may be so imposing so many operational, procedural, and technical restrictions so as to render access to the checklist item useless as a practical matter.[9]

If the Commission's review of a Section 271 application is to be meaningful, it must give some teeth to the "meaningful opportunity to compete" standard. The Commission must evaluate not simply *whether* the ILEC is making a particular checklist item available to competitors, but also the *manner* in which the ILEC is doing so. Under this inquiry, it should not be sufficient for an ILEC to show that it is, as a technical matter, making the checklist item available either in practice or in theory under its interconnection agreements. Rather, to approve a Section 271 application, the Commission must find that the checklist item is being provided on terms and conditions that encourage effective competitive entry.

Under the Act, entry into the interLATA services market is the prize awarded to those ILECs that have opened their local markets to effective competition. Review of

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7 *Bell Atlantic New York Order*, ¶ 46.

8 *Id.*

9 In any case, there are no dark fiber-related performance measures in Pennsylvania. This makes it all the more important that the Commission undertake a searching review of Verizon's practices.

Section 271 applications is thus one of the most important tools available to the Commission to ensure that the promise of the Act is borne out and there is widespread competitive entry. The Commission must take full advantage of this opportunity to ensure that local competition truly exists in Pennsylvania. Once it obtains long distance authority, Verizon will have considerably less incentive to correct the numerous practices detailed below that have made it difficult, if not impossible, for competitors to avail themselves of Verizon-provided dark fiber as part of their local entry strategies.

While these comments focus on the unreasonable restrictions that Verizon places on dark fiber, those restrictions are all too typical of Verizon's overall pattern of conduct. Rather than working cooperatively with competitors to open its markets as required by the Act, Verizon builds as many defensive positions as it can by interpreting the Act and the Commission's rules as narrowly as possible in every way possible. Even where the Act or rules are, under any fair reading, clear, if there is any conceivable basis for resisting a requirement, Verizon does so. It then maintains its position, no matter how tenuous, until this Commission or a state commission affirmatively requires Verizon to cease the offending conduct and come into compliance. The result is that competitors are continually forced to litigate merely to obtain the benefits they are clearly entitled to under the law. And when the competitor finally prevails, Verizon simply retreats to another defensive position, yielding as little as it believes it can get away with. This process continues seemingly without end, forcing competitors to divert incalculable amounts of money, time, and energy into unnecessary litigation and away from bringing competitive service to the public.

In evaluating the Application, the Commission should go beyond a narrow review of whether Verizon has met the "meaningful opportunity to compete" standard

with respect to individual checklist items. It should also evaluate Verizon's overall conduct under Section 271(d)(3)(C), which requires the Commission to consider whether grant of the Application is "consistent with the public interest, convenience, and necessity."[10] If the Commission finds, as Yipes has, that Verizon has done everything in its power to forestall competitive entry through continued intransigence and heal-dragging, then that is a separate and independent basis for denying the Application.

II. Verizon Imposes Numerous Arbitrary Restrictions on Its Provisioning of Dark Fiber

The restrictions that Verizon places on the availability of dark fiber fall into three general categories. First, Verizon places a number of limitations on what dark fiber it is willing to provide to competitors. Second, Verizon severely restricts how and where competitors can gain access to the dark fiber that Verizon does provision. Finally, Verizon insists that it is entitled to take back dark fiber that has been assigned to—and is in use by—a competitor wherever and whenever Verizon unilaterally determines that the dark fiber is being "underutilized" or that its need for the facilities in question trumps the competitor's. Each of these three categories of restrictions is discussed separately below.

A. Verizon Imposes Burdensome Restrictions Concerning What Dark Fiber It Will Make Available to Competitors

As a threshold matter, Verizon refuses to include a substantial portion of its total stock in the inventory of dark fiber that is available to competitors. Verizon restricts the availability of fiber in a number of ways.

1. Verizon Refuses to Make Unconnected Dark Fiber Available

Verizon refuses to make available any dark fiber that is deployed between points in its network, but that is not connected at both ends to a pre-existing fiber panel,

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[10] 47 U.S.C. § 271(d)(3)(d).

accessible terminal, or similar fiber termination equipment.[11] In other words, where there is fiber in the ground between, say, a customer's premises and the serving central office, but the end of the fiber terminating in the central office happens not to be connected to a fiber panel at the time of a competitor's request, Verizon will not provide that fiber on an unbundled basis. Verizon takes the position that the dark fiber is still "under construction" and thus unavailable. Of course, the only "construction" necessary to place the fiber into service is to plug the terminating end of the fiber into a fiber panel or other access point.[12]

Verizon's refusal to make dark fiber available if it is not connected to a fiber panel at the time of a competitor's request violates the Commission's rules concerning the unbundling of the local loop and transport UNEs, of which dark fiber is a component. The rules are clear that ILECs must provide those UNEs (and all others) upon request, unless it is technically infeasible to do so. Nowhere has the Commission exempted from this requirement loops or transport elements that do not happen to be connected to a distribution panel or frame at the time of the request.[13]

The stance that Verizon has taken demonstrates why it would be an absurd result to allow an ILEC to escape its unbundling obligation with respect to loop or transport

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[11] For convenience, fiber panels, accessible terminals, and other fiber termination equipment are collectively referred to throughout the remainder of these comments as "fiber panels."

[12] It would appear that under Verizon's approach, even dark fiber that was previously attached to a fiber panel, but that for some reason was disconnected from the panel is not available to competitors.

[13] Indeed, the definition of the loop UNE makes clear that an ILEC's unbundling obligation is not affected by whether the loop is connected at the time of the request. The loop is defined as "a transmission facility *between* a distribution frame (or its equivalent) at an incumbent LEC central office and the loop demarcation point at an end-user customer premises . . . ." 47 C.F.R. § 51.319(a)(1) (emphasis added). Since the loop is defined as the facility that runs *between* a distribution frame and the customer's premises, and it is the loop which the ILEC must unbundle, whether or not that facility is connected to a frame is irrelevant.

segments that are not connected to a distribution panel or frame at the time of the request. Verizon's ability to deny competitors access to dark fiber by refusing to attach the fiber to a fiber termination panel, empowers Verizon to withhold the dark fiber and to warehouse it until Verizon has a need for the fiber. Then, Verizon attaches the fiber to the fiber termination panel and make it "available inventory" for itself.

Verizon's obligation to include unconnected dark fiber in the inventory of fiber available to competitors is independent of whether there happens to be a fiber panel currently in place. It is the dark fiber itself that, as a component of the loop and transport UNEs, must be unbundled, and whether there is or is not a fiber panel at one or both ends is irrelevant. However, in an effort to further restrict the supply of dark fiber available to competitors, where there is dark fiber in the ground but no terminating fiber panel, Verizon will neither allow the requesting competitor to construct its own fiber panel nor construct one on the competitors behalf.[14] Worse still, even where a competitor already has its own fiber panel in place, Verizon refuses to allow the competitor to attach available but loose dark fiber to the competitor's panel or to perform the attachment itself. Thus, Verizon can keep deployed, unused fiber out of inventory by simply not constructing or by dismantling the terminating fiber panel. So long as only connected fiber counts as inventory, and there is no fiber panel to connect the fiber panel to, the fiber becomes permanently unavailable.

Verizon's approach to unconnected fiber is a perfect example of its pattern of intransigence and the multiple defensive fronts it erects to forestall competition. First, contrary to the Act and the Commission's rules, Verizon maintains the absurd stance that

[14] See section II.B.1. below for a discussion of Verizon's refusal to allow competitors to place their own fiber panel or to place a fiber panel on a competitor's behalf at a collocation.

deployed fiber that can be placed in service merely by being connected to a fiber panel is not available to competitors. It then reinforces that position by refusing competitors' reasonable requests to place a panel on their behalf and by refusing to comply with the Commission's rules requiring it to provide the access necessary to competitors for them to place their own fiber panel. Finally, even where the competitor already has a fiber panel in place, Verizon still refuses to make the dark fiber available. The net result, is that by willfully interpreting the requirements of the Act and the Commission's rules as narrowly as possible, Verizon is able to indefinitely remove large quantities of dark fiber from the inventory available to competitors.

2. Verizon Places a Number of Unreasonable Restrictions on What and How Much Dark Fiber in its Inventory It Will Make Available to Competitors

In addition to arbitrarily limiting the dark fiber in its inventory to fiber that is connected at both ends at the time of the competitor's request, Verizon also places a number of unreasonable restrictions on what and how much dark fiber it will provide. First, Verizon insists on limiting the amount of dark fiber that it will lease to Yipes in any given segment of Verizon's network in any two-year period to the greater of 25% of the available fiber or four strands. Second, Verizon insists that it may reserve an unspecified and undefined amount of dark fiber for its own future growth. Third, Verizon insists that it be able to declare an unspecified number of strands per cable unavailable as "maintenance" fiber. Finally, Verizon insists on the right to deny access to available dark fiber where it unilaterally determines that the request would strand some undefined amount of capacity.

Together, these restrictions significantly constrain the amount of otherwise available dark fiber to which competitors can gain access. Moreover, since the restrictions

are so vaguely-defined and their application is solely at Verizon's discretion, whether a particular segment of dark fiber is available is almost completely arbitrary.

The Commission has stated that an ILEC may only limit the availability of dark fiber if it is "able to demonstrate to the state commission that unlimited access to unbundled dark fiber threatens [its] ability to provide service as a carrier of last resort . . . ."[15] In that event, the state commission may then "establish reasonable limitations governing access to dark fiber loops in [its] state[]."[16] The Pennsylvania PUC has made no finding that Verizon's carrier of last resort obligations are threatened.[17] Absent such a determination, Verizon's insistence on restricting the availability of dark fiber is a direct violation of this Commission's rules.

The restrictions are also in direct violation of an order of the Pennsylvania PUC. The PUC recently ruled that Verizon must abide by the same dark fiber reservation policy adopted by the Massachusetts Department of Telecommunications and Energy ("Massachusetts DTE").[18] The Massachusetts DTE's policy presumes that up to five percent of the fibers in a sheath would be reserved for maintenance, and allows Verizon to reserve for maintenance a minimum of two (2) fibers in smaller cables (*i.e.* those with 12 or

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15 *UNE Remand Order*, ¶ 199.

16 *Id.*

17 Nor could it. There is a considerable oversupply of available fiber and there is no indication that this will change in the foreseeable future. If anything, the amount of unused fiber is likely to increase. According to the Telecommunications Industry Association's 2001 MultiMedia Telecommunications Market Review and Forecast, during 2000 the ILECs nearly *doubled* their stores of fiber, adding a whopping 97.7%. *Id.* at 63. And, as the Commission has noted, even if no new fiber were deployed, ILEC fears of a fiber shortage are "exaggerated" because capacity can be greatly expanded by electronics without the need to install new fiber. *UNE Remand Order*, ¶ 198. The Commission therefore found that "a shortage of fiber capacity caused by unbundling is highly unlikely." *Id.*

18 *Further Pricing of Verizon Pennsylvania, Inc.'s Unbundled Network Elements*, Interim Order, Docket No. R-00005261 (June 8, 2001) at 82-83.

24 fibers) and a maximum of 12 fibers in an extremely large fiber cable. This policy also provides that in the event that Verizon seeks to reserve more fibers in any of these circumstances, Verizon would have to offer a formal explanation to the requesting carrier.[19]

B. Verizon Imposes Arbitrary and Anticompetitive Restrictions on How Competitors Can Access Dark Fiber

In addition to the inventory restrictions that Verizon imposes, Verizon also places a number of arbitrary and anticompetitive conditions on how a competitor can access dark fiber. Those restrictions so limit the ability of competitors to make use of dark fiber that they materially diminish the ability of competitors to "meaningfully compete" using the local loop and transport UNEs.

1. Verizon Refuses to Allow Competitors to Collocate a Fiber Panel Where Verizon Does Not Have a Fiber Panel in Place

As discussed above, there are considerable quantities of dark fiber deployed in Verizon's network that do not terminate in a fiber panel. In order to obtain access to that fiber, a competitor must collocate its own fiber panel. Such collocation can take the form of either physical collocation (where the competitor deploys its own equipment), or virtual collocation (where Verizon deploys the equipment on behalf of the competitor, at the competitor's expense). Verizon, however, has said it will allow neither.

This outright refusal on Verizon's part to either allow a requesting competitor to place its own fiber panel or to place a fiber panel on the competitor's behalf is a violation of the Commission's rules concerning access to interconnection and UNEs and collocation on

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[19] *Consolidated Petitions of New England Telephone and Telegraph Company d/b/a NYNEX, Teleport Communications Group, Inc. Brooks Fiber Communications, AT&T Communications of New England, Inc., MCI Communications Company, and Sprint Communications Company, L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration of Interconnection Agreements between NYNEX and the Aforementioned Companies,* Phase 4-N Order, D.P.U. 96-73/74, 96-80/81, 96-94 (1999).

ILEC premises. Under Section 51.321(a) of the Commission's rules, ILECs must provide "on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with this part, any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon a request by a telecommunications carrier."[20] Technically feasible methods of interconnection or access to UNEs include, but are not limited to "physical collocation and virtual collocation at the premises of an incumbent LEC."[21] Thus, an ILEC must allow access to its premises unless it can demonstrate that such access is either technically infeasible or that space is unavailable.[22]

Section 51.5 of the Commission's rules defines "premises" to include, in addition to the ILEC's central offices, "all buildings or similar structures owned, leased, or otherwise controlled by an incumbent LEC that house its network facilities" and "all structures that house incumbent LEC facilities on public rights-of-way, including but not limited to vaults containing loop concentrators or similar structures."[23] Thus, the Commission's collocation rules "apply to collocation at any technically feasible point, from the largest central office to the most compact [fiber distribution interface]."[24] As Verizon has not so much as asserted a space restriction, much less made that showing on a case-by-case basis as is required,[25] it cannot refuse to allow a competitor to place its own fiber panel or to place a fiber panel on the competitor's behalf.

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20 47 C.F.R. § 51.321(a).

21 47 C.F.R. § 51.321(b)(1).

22 47 C.F.R. § 51.321(e).

23 47 C.F.R. § 51.5.

24 *UNE Remand Order*, ¶ 221.

25 47 C.F.R. § 51.321(d).

2. Verizon Refuses to Provide Access to Splice Points

In Massachusetts, Verizon provides access to dark fiber at splice points, pursuant to an order of the Massachusetts DTE. Such access is often the easiest and most efficient way for a competitor to connect its facilities with ILEC-provided dark fiber. In contravention of the *UNE Remand Order*'s "Best Practices" requirement, however, Verizon has refused to provide that same access in Pennsylvania. The "Best Practices" rule provides that, where a state commission has found a particular method of access to be technically feasible, all ILECs must provide the same arrangements in other states unless the ILEC comes forward and affirmatively rebuts the presumption of technical feasibility.[26] Verizon has made no such claim in Pennsylvania and therefore is in violation of the Commission's rule.

Verizon, however, maintains that it is not required to provide access at splice points in Pennsylvania until it is ordered to do so by the Pennsylvania PUC. Verizon has it exactly backwards, however. Under the "Best Practices" rule, Verizon must provide access unless and until it obtains an order from the Pennsylvania PUC relieving it of that obligation.

Yipes believes that the Commission's rule could not be clearer. Verizon's refusal to comply with its terms is just another example of its intransigence in the face of competitive entry, and underscores precisely why the Application should be rejected. If Verizon feels no compulsion to comply with the Commission's local competition rules even with its application for long distance entry pending, then one can only imagine how brazenly Verizon will conduct itself once it has obtained long distance authority.

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[26] 47 C.F.R. § 51.319(a)(2)(C).

C. Verizon's Policies Concerning the Recall of Dark Fiber Are Arbitrary and Anticompetitive

Even where a competitor has successfully obtained dark fiber from Verizon and put the fiber into service in its own network, Verizon insists that it may "take back" provisioned dark fiber either (1) upon its filing with the Pennsylvania PUC a petition stating that the recall is necessary to meet Verizon's carrier of last resort obligations and providing 12-month advance notice or (2) where it unilaterally determines that the fiber is begin "underutilized."

Verizon's insistence that it be permitted to arbitrarily and unilaterally seize fiber in service in a competitor's network is patently unreasonable and anticompetitive. It impairs the ability of competitors to rationally plan their networks; exposes them to unacceptable capital risks; and could leave them unable to provide service to a customer served through dark fiber reclaimed by Verizon.

Verizon's practices also violate the policies adopted by the Commission in the *UNE Remand Order*. There, the Commission held that limitations on the unbundling of dark fiber are reasonable if and only if an ILEC *first* demonstrates to a state commission that a threat to its carrier of last resort obligations was "likely and foreseeable," and the limitation related to the specific "likely and foreseeable threat."[27] Thus the Application should not be granted absent proof that Verizon has adopted the practice that it will take back fiber only after it has demonstrated to the Pennsylvania PUC that, absent such a recall, Verizon will be unable to satisfy its carrier of last resort obligations.

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[27] *UNE Remand Order*, ¶ 352.

III. The Restrictions Imposed by Verizon Are Collectively So Onerous as to Preclude Competitors from Being Able to "Meaningfully Compete"

Collectively, the restrictions imposed by Verizon on its provisioning of dark fiber are so onerous that it is difficult, if not impossible, for competitors to "meaningfully compete" using Verizon-provided dark fiber. Competitors are arbitrarily denied the use of available fiber, prohibited from accessing the dark fiber in ways they are clearly entitled to under the Commission's rules, and exposed to the risk that Verizon will unilaterally act to take back fiber being used to provide service to customers.

While the Commission has said that Section 271 proceedings are not the appropriate forum for competitors to air their complaints about the details of the implementation of the Commission's local competition rules, Verizon's conduct with respect to dark fiber rises to an altogether different level. Verizon's abuses are so extensive and pervasive[28] that the issue is not simply whether or not Verizon makes it marginally more difficult for competitors to compete using dark fiber but whether competitors are so impaired that their ability to "meaningfully compete" is materially diminished. Yipes submits that the answer to that latter question is yes and that, accordingly, the Commission should find that Verizon has failed to meet checklist items 2, 4, and 5. Moreover, given

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[28] The specific instances cited by Yipes in these comments are by no means an exhaustive catalog of Verizon's anticompetitive practices. While Yipes has focused on only the clearest examples of Verizon's abuses, there are countless others. For example, even where Verizon does agree to make dark fiber available to competitors, its procedures for ordering and provisioning dark fiber are unduly burdensome and anticompetitive. First, Verizon refuses to make dark fiber available until the competitor's collocation facilities have been completed. This procedure is highly inefficient and burdensome because dark fiber that has been shown as "available" in response to a Dark Fiber Inquiry ("DFI") form can become unavailable while the competitor completes its collocation. Second, Verizon dictates that to obtain dark fiber, a competitor must first submit a DFI and then, only after Verizon determines that there is fiber available to meet the request, submit an Access Service Request. Not only is this a hindrance to competitors in the marketplace, as it lengthens the time it takes to place a customer in service, it also creates the possibility that previously available fiber will become unavailable.

Verizon's overall pattern of anticompetitive conduct with respect to dark fiber, the Commission should also find that the grant of the Application is not consistent with the public interest standard of Section 271(d)(3)(C) and should deny it on that basis as well.

CONCLUSION

For the reasons shown above, the Commission should deny the Application.

Respectfully Submitted,

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